

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1089 be amended to read as follows:

- 1 Page 3, after line 14, begin a new paragraph and insert:  
2 "SECTION 2. IC 36-4-3-11, AS AMENDED BY P.L.111-2005,  
3 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2006]: Sec. 11. (a) Except as provided in section 5.1(i) of this  
5 chapter and subsections (d) and (e), whenever territory is annexed by  
6 a municipality under this chapter, the annexation may be appealed by  
7 filing with the circuit or superior court of a county in which the  
8 annexed territory is located a written remonstrance signed by:  
9 (1) ~~at least sixty-five percent (65%)~~ **more than fifty percent**  
10 **(50%)** of the owners of land in the annexed territory; or  
11 (2) the owners of more than ~~seventy-five percent (75%)~~ **sixty-five**  
12 **percent (65%)** in assessed valuation of the land in the annexed  
13 territory.  
14 The remonstrance must be filed within ninety (90) days after the  
15 publication of the annexation ordinance under section 7 of this chapter,  
16 must be accompanied by a copy of that ordinance, and must state the  
17 reason why the annexation should not take place.  
18 (b) On receipt of the remonstrance, the court shall determine  
19 whether the remonstrance has the necessary signatures. In determining  
20 the total number of landowners of the annexed territory and whether  
21 signers of the remonstrance are landowners, the names appearing on the  
22 tax duplicate for that territory constitute prima facie evidence of  
23 ownership. Only one (1) person having an interest in each single  
24 property, as evidenced by the tax duplicate, is considered a landowner  
25 for purposes of this section.

(c) If the court determines that the remonstrance is sufficient, it shall fix a time, within sixty (60) days of its determination, for a hearing on the remonstrance. Notice of the proceedings, in the form of a summons, shall be served on the annexing municipality. The municipality is the defendant in the cause and shall appear and answer.

(d) If an annexation is initiated by property owners under section 5.1 of this chapter and all property owners within the area to be annexed petition the municipality to be annexed, a remonstrance to the annexation may not be filed under this section.

(e) This subsection applies if:

- (1) the territory to be annexed consists of not more than one hundred (100) parcels; and
- (2) eighty percent (80%) of the boundary of the territory proposed to be annexed is contiguous to the municipality.

An annexation may be appealed by filing with the circuit or superior court of a county in which the annexed territory is located a written remonstrance signed by at least seventy-five percent (75%) of the owners of land in the annexed territory as determined under subsection (b).

SECTION 2. IC 36-4-3-13, AS AMENDED BY P.L.111-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 13. (a) Except as provided in subsections (e) and (g), at the hearing under section 12 of this chapter, the court shall order a proposed annexation to take place if the following requirements are met:

- (1) The requirements of either subsection (b) or (c).
- (2) The requirements of subsection (d).

(b) The requirements of this subsection are met if the evidence establishes the following:

- (1) That the territory sought to be annexed is contiguous to the municipality.
- (2) One (1) of the following:
  - (A) The resident population density of the territory sought to be annexed is at least three (3) persons per acre.
  - (B) Sixty percent (60%) of the territory is subdivided.
  - (C) The territory is zoned for commercial, business, or industrial uses.

(c) The requirements of this subsection are met if the evidence establishes the following:

- (1) That the territory sought to be annexed is contiguous to the municipality as required by section 1.5 of this chapter, except that at least one-fourth (1/4), instead of one-eighth (1/8), of the aggregate external boundaries of the territory sought to be annexed must coincide with the boundaries of the municipality.
- (2) That the territory sought to be annexed is needed and can be used by the municipality for its development in the reasonably near future.

(d) The requirements of this subsection are met if the evidence establishes that the municipality has developed and adopted a written fiscal plan and has established a definite policy, by resolution of the legislative body as set forth in section 3.1 of this chapter. The fiscal plan must show the following:

(1) The cost estimates of planned services to be furnished to the territory to be annexed. The plan must present itemized estimated costs for each municipal department or agency.

(2) The method or methods of financing the planned services. The plan must explain how specific and detailed expenses will be funded and must indicate the taxes, grants, and other funding to be used.

(3) The plan for the organization and extension of services. The plan must detail the specific services that will be provided and the dates the services will begin.

(4) That planned services of a noncapital nature, including police protection, fire protection, street and road maintenance, and other noncapital services normally provided within the corporate boundaries, will be provided to the annexed territory within one (1) year after the effective date of annexation and that they will be provided in a manner equivalent in standard and scope to those noncapital services provided to areas within the corporate boundaries regardless of similar topography, patterns of land use, and population density.

(5) That services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities, and stormwater drainage facilities, will be provided to the annexed territory within three (3) years after the effective date of the annexation in the same manner as those services are provided to areas within the corporate boundaries, regardless of similar topography, patterns of land use, and population density, and in a manner consistent with federal, state, and local laws, procedures, and planning criteria.

(e) At the hearing under section 12 of this chapter, the court shall do the following:

(1) Consider evidence on the conditions listed in subdivision (2).

(2) Order a proposed annexation not to take place if the court finds that all of the conditions set forth in clauses (A) through (D) and, if applicable, clause (E) exist in the territory proposed to be annexed:

(A) The following services are adequately furnished by a provider other than the municipality seeking the annexation:

(i) Police and fire protection.

(ii) Street and road maintenance.

(B) The annexation will have a significant financial impact on the residents or owners of land.

(C) The annexation is not in the best interests of the owners of

1 land in the territory proposed to be annexed as set forth in  
2 subsection (f).

3 (D) One (1) of the following opposes the annexation:

4 (i) ~~At least sixty-five percent (65%)~~ **more than fifty percent**  
5 **(50%)** of the owners of land in the territory proposed to be  
6 annexed.

7 (ii) The owners of more than ~~seventy-five percent (75%)~~  
8 **sixty-five percent (65%)** in assessed valuation of the land  
9 in the territory proposed to be annexed.

10 Evidence of opposition may be expressed by any owner of  
11 land in the territory proposed to be annexed.

12 (E) This clause applies only to an annexation in which eighty  
13 percent (80%) of the boundary of the territory proposed to be  
14 annexed is contiguous to the municipality and the territory  
15 consists of not more than one hundred (100) parcels. At least  
16 seventy-five percent (75%) of the owners of land in the  
17 territory proposed to be annexed oppose the annexation as  
18 determined under section 11(b) of this chapter.

19 (f) The municipality under subsection (e)(2)(C) bears the burden of  
20 proving that the annexation is in the best interests of the owners of land  
21 in the territory proposed to be annexed. In determining this issue, the  
22 court may consider whether the municipality has extended sewer or  
23 water services to the entire territory to be annexed:

24 (1) within the three (3) years preceding the date of the  
25 introduction of the annexation ordinance; or

26 (2) under a contract in lieu of annexation entered into under  
27 IC 36-4-3-21.

28 The court may not consider the provision of water services as a result  
29 of an order by the Indiana utility regulatory commission to constitute  
30 the provision of water services to the territory to be annexed.

31 (g) This subsection applies only to cities located in a county having  
32 a population of more than two hundred thousand (200,000) but less  
33 than three hundred thousand (300,000). However, this subsection does  
34 not apply if on April 1, 1993, the entire boundary of the territory that  
35 is proposed to be annexed was contiguous to territory that was within  
36 the boundaries of one (1) or more municipalities. At the hearing under  
37 section 12 of this chapter, the court shall do the following:

38 (1) Consider evidence on the conditions listed in subdivision (2).

39 (2) Order a proposed annexation not to take place if the court  
40 finds that all of the following conditions exist in the territory  
41 proposed to be annexed:

42 (A) The following services are adequately furnished by a  
43 provider other than the municipality seeking the annexation:

44 (i) Police and fire protection.

45 (ii) Street and road maintenance.

46 (B) The annexation will have a significant financial impact on  
47 the residents or owners of land.

- 1 (C) One (1) of the following opposes the annexation:  
2 (i) A majority of the owners of land in the territory proposed  
3 to be annexed.  
4 (ii) The owners of more than seventy-five percent (75%) in  
5 assessed valuation of the land in the territory proposed to be  
6 annexed.  
7 Evidence of opposition may be expressed by any owner of  
8 land in the territory proposed to be annexed.  
9 (h) The most recent:  
10 (1) federal decennial census;  
11 (2) federal special census;  
12 (3) special tabulation; or  
13 (4) corrected population count;  
14 shall be used as evidence of resident population density for purposes of  
15 subsection (b)(2)(A), but this evidence may be rebutted by other  
16 evidence of population density."  
(Reference is to HB 1089 as printed January 27, 2006.)

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Representative Orentlicher